

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapter 1
7/31/18

CHAPTER 1. GENERAL PROVISIONS

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CHAPTER 1. GENERAL PROVISIONS

Revised Law

Art. 1.025. SEVERABILITY. If any provision of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the code that can be given effect without the invalid provision or application, and to this end the provisions of this code are severable. (Code Crim. Proc., Art. 54.01.)

Source Law

Art. 54.01. SEVERABILITY CLAUSE. If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

Revisor's Note

(1) Article 54.01, Code of Criminal Procedure, refers to "any provision, section or clause" of the act. The revised law omits "section" and "clause" as included in the meaning of "provision."

(2) Article 54.01, Code of Criminal Procedure, is a severability provision that extends to any provision of this "Act." The provision was added by Chapter 722 (S.B. 107), Acts of the 59th Legislature, Regular Session, 1965, which enacted the Code of

1 Criminal Procedure in its entirety. Accordingly, the
2 severability provision in Article 54.01 applies to the
3 articles added in that act. Subsequent amendments to
4 or reenactments of the Code of Criminal Procedure are
5 subject to a substantively identical severability
6 provision in Section 311.032(c), Government Code (Code
7 Construction Act). See Ex parte Torres, 943 S.W.2d
8 469, 473 n.5 (Tex. Crim. App. 1997). Therefore, the
9 revised law substitutes "code" for "Act" because all
10 portions of the Code of Criminal Procedure are subject
11 to the same severability provision.

12 (3) Article 54.01, Code of Criminal Procedure,
13 states that an invalid provision or application does
14 not affect other provisions or applications that may
15 be given effect "without the invalid provision." The
16 revised law adds "or application" for clarity and
17 consistency in the terminology used within the
18 article.

19 Revised Law

20 Art. 1.026. CONSTRUCTION. The articles contained in
21 Chapter 722 (S.B. 107), Acts of the 59th Legislature, Regular
22 Session, 1965, as revised, rewritten, changed, combined, and
23 codified, may not be construed as a continuation of former laws
24 except as otherwise provided in that Act. (Code Crim. Proc., Art.
25 54.02, Sec. 2(a) (part).)

26 Source Law

27 (a) . . . the articles contained in this Act, as
28 revised, rewritten, changed, combined, and codified,
29 may not be construed as a continuation of former laws
30 except as otherwise provided in this Act. . . .

31 Revisor's Note

32 (1) The first portion of Section 2(a), Article
33 54.02, Code of Criminal Procedure, as added by Chapter
34 722 (S.B. 107), Acts of the 59th Legislature, Regular
35 Session, 1965, recites legislative findings regarding

1 procedural requirements for the enactment of the 1965
2 Code of Criminal Procedure. The revised law omits that
3 provision because it served its purpose on the
4 effective date of the act and is executed law. The
5 omitted law reads:

6 Sec. 2. (a) All laws and parts of
7 laws relating to criminal procedure omitted
8 from this Act have been intentionally
9 omitted, and all additions to and changes in
10 such procedure have been intentionally
11 made. This Act shall be construed to be an
12 independent Act of the Legislature, enacted
13 under its caption, and

14 (2) The last sentence of Section 2(a), Article
15 54.02, Code of Criminal Procedure, as added by Chapter
16 722 (S.B. 107), Acts of the 59th Legislature, Regular
17 Session, 1965, saves from repeal criminal procedure
18 provisions in the Revised Civil Statutes of Texas,
19 1925, and the Penal Code of Texas, 1925. The revised
20 law omits that provision for the reason stated in
21 Revisor's Note (1). The omitted law reads:

22 (a) . . . The existing statutes of
23 the Revised Civil Statutes of Texas, 1925,
24 as amended, and of the Penal Code of Texas,
25 1925, as amended, which contain special or
26 specific provisions of criminal procedure
27 covering specific instances are not
28 repealed by this Act.

29 Revisor's Note
30 (End of Chapter)

31 (1) Section 1(a), Article 54.02, Code of
32 Criminal Procedure, as added by Chapter 722
33 (S.B. 107), Acts of the 59th Legislature, Regular
34 Session, 1965, generally repeals laws relating to
35 criminal procedure that were not otherwise included in
36 that act as part of the 1965 Code of Criminal
37 Procedure. Because those laws were repealed on the
38 effective date of the act, the revised law omits
39 Section 1(a) as executed. The omitted law reads:

40 Art. 54.02. REPEALING CLAUSE
41 Sec. 1. (a) Except as otherwise
42 provided in this Article 54.02, all laws

1 relating to criminal procedure in this
2 State that are not embraced, incorporated,
3 or included in this Act and that have not
4 been enacted during the Regular Session of
5 the 59th Legislature are repealed.

6 (2) Section 1(b), Article 54.02, Code of
7 Criminal Procedure, as added by Chapter 722
8 (S.B. 107), Acts of the 59th Legislature, Regular
9 Session, 1965, lists certain articles of the Code of
10 Criminal Procedure of Texas, 1925, that were saved
11 from the general repeal of criminal procedure laws
12 provided in Section 1(a), Article 54.02, Code of
13 Criminal Procedure. Because those articles were saved
14 from repeal on the effective date of the act, the
15 revised law omits Section 1(b) as executed. The
16 omitted law reads:

17 (b) None of the following articles of
18 the Code of Criminal Procedure of Texas,
19 1925, in force on the effective date of this
20 Act, is repealed: 52; 52-1 through 52-161,
21 both inclusive; 367D through 367K, both
22 inclusive; 781B-1, 781B-2; 944 through
23 951, both inclusive; 1009 through 1035,
24 both inclusive; 1037 through 1056, both
25 inclusive; 1058 through 1064, both
26 inclusive; and 1075 through 1082, both
27 inclusive.

28 (3) Section 2(b), Article 54.02, Code of
29 Criminal Procedure, as added by Chapter 722
30 (S.B. 107), Acts of the 59th Legislature, Regular
31 Session, 1965, refers to a person under recognizance
32 or bond on the effective date of the act and continues
33 that person's recognizance or bond after that date.
34 The revised law omits Section 2(b) because it served
35 its purpose on the effective date of the act and is
36 executed law. The omitted law reads:

37 (b) A person under recognizance or
38 bond on the effective date of this Act
39 continues under such recognizance or bond
40 pending final disposition of any action
41 pending against him.

42 (4) Article 54.03, Code of Criminal Procedure,
43 as added by Chapter 722 (S.B. 107), Acts of the 59th

1 Legislature, Regular Session, 1965, suspends the
2 constitutional rule requiring bills to be read on
3 three consecutive days and states the effective date
4 of the act. The revised law omits Article 54.03 as
5 executed because it served its purpose on the
6 effective date of the act and is executed law. The
7 omitted law reads:

8 Art. 54.03. EMERGENCY CLAUSE. The
9 fact that the laws relating to criminal
10 procedure in this State have not been
11 completely revised and re-codified in more
12 than a century past and the further fact
13 that the administration of justice, in the
14 field of criminal law, has undergone
15 changes, through judicial construction and
16 interpretation of constitutional
17 provisions, which have been, in certain
18 instances, modified or nullified, as the
19 case may be, necessitates important changes
20 requiring the revision or modernization of
21 the laws relating to criminal procedure,
22 and the further fact that it is desirable and
23 desirable to strengthen, and to conform,
24 various provisions in such laws to current
25 interpretation and application, emphasizes
26 the importance of this legislation and all
27 of which, together with the crowded
28 condition of the calendar in both Houses,
29 create an emergency and an imperative
30 public necessity that the Constitutional
31 Rule requiring bills to be read on three
32 several days be suspended, and said Rule is
33 hereby suspended, and that this Act shall
34 take effect and be in force and effect from
35 and after 12 o'clock Meridian on the 1st day
36 of January, Anno Domini, 1966, and it is so
37 enacted.